Patent
Attorney Docket No: 1033018-000137

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of	
Gene G. Faison JR. et al.	Group Art Unit: 3771
Application No.: 10/648,282	Examiner: Lopez, Amadeus Sebastian
Filed: August 27, 2003	Confirmation No.: 4444
For: FLUID VAPORIZING DEVICE HAVING CONTROLLED TEMPERATURE PROFILE HEATER/CAPILLARY TUBE	

RESPONSE TO ELECTION/RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the election/restriction requirement set forth in the Official Action dated October 10, 2006, Applicants hereby elect, with traverse, Group I, Claims 1-7, 9-16, and 18-22, drawn to a fluid vaporizing device and the method of using.

As set forth in MPEP § 821.04(b), the propriety of a restriction requirement should be reconsidered when (1) all the claims directed to the elected invention are in condition for allowance, and (2) the nonelected invention(s) should be considered for rejoinder. MPEP § 821.04(b) also sets forth that in order to be eligible for rejoinder, a claim to a nonelected invention must depend from or otherwise require all the limitations of an allowable claim. Furthermore, where restriction was required between a product and a process of making and/or using the product, and the product invention was elected and subsequently found allowable, according to MPEP § 821.04(b) all claims to a nonelected process invention must depend from or otherwise require all the limitations of an allowable claim for the claims directed to

that process invention to be eligible for rejoinder. Accordingly, it is respectfully requested that non-elected Claims 8, 17, and 23-28 be rejoined upon allowance of any generic claims.

Applicants respectfully assert that Groups I and II should properly be examined together. Group I is directed to fluid vaporizing devices and methods of vaporizing a fluid using a fluid vaporizing device, and Group II is directed to methods of manufacturing a fluid vaporizing device. Therefore, the Groups I and II are closely related.

Applicants submit that the Groups I and II are closely related and that a proper search of any of the claims should, by necessity, require a proper search of the others. Thus, Applicants submit that all of the claims can be searched simultaneously, and that a duplicative search, with possibly inconsistent results, may occur if the restriction requirement is maintained.

Applicants submit that any nominal burden placed upon the Examiner to search accordingly to determine the art relevant to Groups I and II is significantly outweighed by the public's interest in not having to obtain and study many separate patents in order to have available all of Applicants' issued patent claims. The alternative is to proceed with the filing of multiple applications, each consisting of generally the same disclosure, and each being subjected to essentially the same search, perhaps by different Examiners on different occasions. This process would place an unnecessary burden on both the Patent and Trademark Office and on the Applicants.

Regardless of whether Groups I and II are independent or distinct, Applicants respectfully assert that the Examiner need not have restricted the application. MPEP

§ 803 requires that "[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." Therefore, it is not mandatory to make a restriction requirement in all situations where it would be deemed proper.

In the interest of economy, for the Office, for the public-at-large, and for Applicants, reconsideration and withdrawal of the restriction requirement are requested.

Applicants expressly reserve the right to file one or more divisional and/or continuation applications covering the subject matter of the non-elected claims.

Early and favorable consideration on the merits is respectfully requested.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: November 13, 2006

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